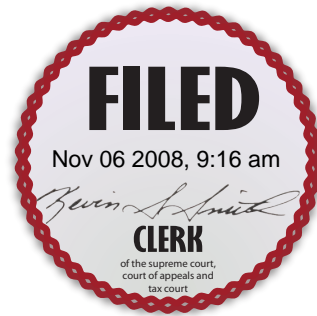


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

JEREMY A. BISHOP,  
Appellant-Defendant,

VS.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 48A02-0804-CR-346

APPEAL FROM THE MADISON CIRCUIT COURT  
The Honorable Fredrick R. Spencer, Judge  
Cause No. 48C01-0711-FA-532

November 6, 2008

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Jeremy A. Bishop (“Bishop”) appeals his sentence for two counts of Child Molesting, as Class A<sup>1</sup> and C felonies,<sup>2</sup> and the trial court’s denial of his motion for release of property. We affirm.

## **Issues**

Bishop raises two issues on appeal, which we restate as follows:

- I. Whether his sentence is inappropriate; and
- II. Whether the trial court committed fundamental error in denying his motion for release of property.

## **Facts and Procedural History**

M.S., Bishop’s stepdaughter, was born in 1998. Bishop, born in 1979, repeatedly had sexual intercourse with her when she was seven and eight years old. H.S., also Bishop’s stepdaughter, was born in 2000. Bishop repeatedly fondled or touched H.S., with the intent to arouse or satisfy his sexual desires, when she was six and seven years old.

The State charged Bishop with three counts of Child Molesting, one as a Class A felony for conduct related to M.S. and two as Class C felonies for fondling or touching M.S. and H.S. Pursuant to a plea agreement, the State dismissed the Class C charge related to M.S. Bishop pled guilty to two felonies, having sexual intercourse with M.S. (Class A) and fondling or touching H.S. (Class C).

The trial court sentenced Bishop to concurrent terms of forty-eight and six years, to be

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<sup>1</sup> Ind. Code § 35-42-4-3(a)(1).

fully executed. Bishop moved for release of a handgun and a computer that had been seized by police. The trial court denied his motion during the sentencing hearing.

Bishop now appeals.

## **Discussion and Decision**

### **I. Appropriateness of Sentence**

Bishop argues that his aggregate sentence of forty-eight years is inappropriate. Under Indiana Appellate Rule 7(B), this “Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B); see IND. CONST. art. VII, § 6. A defendant ““must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.”” Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007).

First, Bishop argues that the trial court “improperly depreciated the mitigating effect of the guilty plea.” Appellant’s Brief at 4. However, a trial court’s sentencing order may no longer be challenged as reflecting an improper weighing of sentencing factors. Anglemyer, 868 N.E.2d at 491. Accordingly, this argument is unavailing.

As to the nature of the offense, the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” Childress, 848 N.E.2d at 1081. The minimum, advisory, and maximum terms for the convictions were

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<sup>2</sup> Ind. Code § 35-42-4-3(b).

respectively twenty, thirty, and fifty years for the Class A felony, and two, four, and eight years for the Class C felony. Ind. Code §§ 35-50-2-4 and -6.

Bishop repeatedly had sexual intercourse with M.S. and routinely ejaculated over her body after subjecting her to sexual intercourse. M.S. and H.S. signed a one-page, handwritten note, stating that Bishop did bad things to them, made them keep a secret from their mother, and made them feel uncomfortable and sick. As their stepfather, his conduct exploited his position of trust. See Ind. Code § 35-38-1-7.1(a)(8).

An element of each offense is that the victim is under age fourteen. However, the trial court may find an aggravating circumstance if the victim is under age twelve. I.C. § 35-38-1-7.1(a)(3). M.S. and H.S. were between six and eight years old at all relevant times.

The victims' mother testified at the sentencing hearing regarding the negative impact that Bishop's conduct had upon her family. "[Y]ou can't imagine what this kind of thing does to you and your family. It's the most awful thing that I've ever been through." Transcript at 23.

According to Bishop, he was tortured and molested as a young child by his mother and stepfather. He also stated that he was placed in a guardian home at age five and that he resided for some time with his grandparents. Bishop was diagnosed with clinical depression and bipolar disorder. He participated in individual and family counseling, and received in-patient treatment.

Bishop has a criminal history, but it is not extensive. As a juvenile, Bishop was convicted of possessing marijuana and violated his probation for that offense on three

occasions. As an adult, he was convicted of Driving While Suspended and Possession of Marijuana, each a Class C misdemeanor.

We are sensitive to Bishop's statements about his childhood. Nonetheless, on numerous occasions, he molested his own stepdaughters, who lived with him and had to face him regularly. The two victims were very young and therefore less physically capable of resisting his conduct. Furthermore, he made them avoid communicating with their mother about these horrible acts. Based upon our review of the case and our consideration of the trial court's decision, we conclude that Bishop's sentence for two counts of Child Molesting is not inappropriate.

## II. Motion for Release

On appeal, Bishop acknowledges that he did not object to the trial court's denial of his motion. He therefore argues that it was fundamental error for the trial court to deny his motion for release of property, specifically, a handgun and a computer. However, this relief is "available only when the record reveals clearly blatant violations of basic and elementary principles of due process, and the harm or potential for harm cannot be denied." Merritt v. State, 822 N.E.2d 642, 643-44 (Ind. Ct. App. 2005) (quoting Benson v. State, 762 N.E.2d 748, 755 (Ind. 2002)).

Bishop moved for release of the property to his uncle. The trial court denied the motion and ordered the property to be delivered to the victims' mother. Bishop did not object. Following final disposition, seized property must be returned to the rightful owner. Ind. Code § 35-33-5-5(c)(1). Because Bishop did not object to the trial court's decision,

there was no evidence presented regarding who owned the gun and the computer. Therefore, Bishop's failure to object waived appellate review of the issue and prevented this Court from even being able to conduct a meaningful review. The trial court did not commit fundamental error in denying his motion.

### **Conclusion**

Bishop's sentence is not inappropriate. The trial court did not commit fundamental error in denying Bishop's motion for release of property.

Affirmed.

RILEY, J., and ROBB, J., concur.